

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JAMES S. GORDON, JR.,  
Plaintiff,

v.

ASCENTIVE, LLC, a Delaware  
limited liability company, ADAM  
SCHRAN, individually and as part  
of his marital community; JOHN  
DOES I-X,  
Defendants.

No. CV-05-5079-FVS

ORDER OF DISMISSAL

**THIS MATTER** comes before the Court on the Defendants' Motion to Dismiss Plaintiff's Amended First Amended Complaint, Ct. Rec. 169. The Plaintiff is proceeding pro se. The Defendants are represented by Floyd E. Ivey.

The Court has previously held that the Plaintiff's complaint must identify four categories of information in order to satisfy the pleading requirements of Federal Rule of Civil Procedure 8. It has twice permitted the Plaintiff to amend his pleadings in order to provide this information. The Plaintiff has failed to do so. The case will accordingly be dismissed.

**BACKGROUND**

On June 19, 2007, the Court denied the Defendants' motion to dismiss the Plaintiff's First Amended Complaint ("FAC"). Order

1 Denying Defendants' Motion to Dismiss, Ct. Rec. 133 ("June 19 Order").  
2 The Court expressed concern, however, that the FAC relied upon vague  
3 statements and conclusory allegations. *Id.* at 10-11. Specifically,  
4 the Court found that the FAC's failure to identify the emails at issue  
5 rendered it impossible for the Defendants to frame a responsive  
6 pleading. It also found that, without a more particular description  
7 of the emails, the Plaintiff's claims could easily become a moving  
8 target. *Id.* at 11. The Court accordingly directed the Plaintiff to  
9 file a more definite statement identifying:

- 10 a) The number of emails at issue;
- 11 b) The time frame during which the emails were sent;
- 12 c) The addresses and domain names that received the emails;  
13 and
- 14 d) A brief summary of the factual basis upon which the  
15 Plaintiff claims that Impulse sent the emails.

16 *Id.* at 12.

17 The Plaintiff filed a more definite statement on June 25, 2007,  
18 Ct. Rec. 134. Like the FAC, it failed to limit the Plaintiff's claims  
19 to "a particular set of emails during a particular period of time."  
20 Order Granting In Part and Denying In Part Motion to Strike, Ct. Rec.  
21 145 at 2. The Court ordered the Plaintiff to file an amended pleading  
22 setting forth the information described in its June 19 Order, thereby  
23 giving the Plaintiff "one final opportunity to remedy his vague  
24 complaint." *Id.* at 2-3.

25 The Plaintiff thereafter filed his Amended First Amended  
26 Complaint, Ct. Rec. 151 ("AFAC"). The AFAC differs from the FAC in  
only one respect of significance to the present motion: five exhibits

1 are attached to the AFAC. Exhibit A consists of a compact disc  
2 containing the commercial emails at issue in this litigation. AFAC ¶  
3 3.7. Exhibit B consists of three requests the Plaintiff sent to the  
4 Defendants asking them to stop sending him commercial emails. *Id.* ¶  
5 3.8. Exhibit C consists of a certified letter the Plaintiff sent to  
6 the Defendants asking them to stop sending him commercial emails. *Id.*  
7 ¶ 3.11. Exhibit D consists of two emails sent by the Defendants in  
8 response to the certified letter of Exhibit C. *Id.* Finally, Exhibit  
9 E consists of three sample commercial emails. *Id.* ¶ 3.17.

10 Before the Defendants had filed their response to the AFAC, the  
11 Plaintiff's attorney moved to withdraw. The Court found that, under  
12 the circumstances presented in the motion to withdraw, further  
13 vigorous legal representation would be impossible. It accordingly  
14 granted the motion and stayed the action for 60 days in order to  
15 enable the Plaintiff to obtain new counsel. Order Granting Motion to  
16 Withdraw, Ct. Rec. 174. The Plaintiff has not obtained new counsel.

17 The Defendants move to dismiss the AFAC on the grounds that it  
18 fails to comply with either the requirements of Rule 8 or this Court's  
19 prior orders. The Court agrees. As noted above, the AFAC is  
20 substantially identical to the FAC. The Plaintiff's complaint  
21 continues to rely upon vague allegations. It also fails to "limit his  
22 claims to a particular set of emails sent during a particular period  
23 of time." Order Granting In Part and Denying In Part Motion to  
24 Strike, Ct. Rec. 145 at 2.

25 Attachments A-E compound rather than cure these defects. A  
26 pleading burdened with thousands of attachments is neither short nor

1 plain. The emails and correspondence previously exchanged by the  
2 parties would be a proper subject for discovery, summary judgment, and  
3 trial. It is neither necessary nor appropriate to include them in the  
4 complaint. The AFAC's sheer volume renders it unusable. It will  
5 accordingly be dismissed. The Court being fully advised,

6 **IT IS HEREBY ORDERED:**

7 1. The Defendants' Motion to Dismiss Plaintiff's Amended First  
8 Amended Complaint, **Ct. Rec. 169**, is **GRANTED**.

9 2. This action is **DISMISSED WITH PREJUDICE**.

10 **IT IS SO ORDERED.** The District Court Executive is hereby  
11 directed to enter this order, furnish copies to counsel **and the**  
12 **Plaintiff**, and **CLOSE THE FILE**.

13 **DATED** this 18th day of July, 2008.

14  
15 s/ Fred Van Sickle  
Fred Van Sickle  
16 Senior United States District Judge  
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